

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

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UNITED STATES OF AMERICA,	)	
	)	
vs.	)	5:09-CR-216-FL
	)	
	)	
DANIEL PATRICK BOYD,	)	
HYSEN SHERIFI;	)	
ANES SUBASIC;	)	
ZAKARIYA BOYD,	)	
DYLAN BOYD,	)	
MOHAMMAD OMAR ALY HASSAN	)	
ZIYAD YAGHI,	)	
	)	
Defendants.	)	
	)	

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STATUS CONFERENCE  
JANUARY 13, 2011  
BEFORE THE HONORABLE JAMES E. GATES  
U. S. MAGISTRATE JUDGE

**APPEARANCES:**

**FOR THE GOVERNMENT:**

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COURT REPORTER: REBECCA L. CRUNK  
 STENOGRAPH WITH COMPUTER AIDED TRANSCRIPTION

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(The proceedings began at 10:10 a.m.)

THE COURT: Good morning, folks.

Madam Clerk, would you please swear the interpreter.

THE CLERK: Please rise.

THEREUPON,

SPANISH INTERPRETER,

having been duly sworn, interpreted as follows:

THE COURT: Mr. Ayers, I want to welcome you to this case. This is the first court proceeding that you've been able to participate since your entry into the case. You know, Mr. Sun is a late arrival as well, so you're not alone in not coming to this case at the outset, but the Court appreciates the service of you as well as other -- the other counsel in this case.

MR. SUN: Thank you, Judge.

THE COURT: Now, let me begin by just reminding counsel of an order that Judge Flanagan had entered back in December. I believe it's docket entry 678, and it -- in it, she directed or reminded counsel of the need to file MOUs for those folks who have dealt with sensitive information, I believe directed the parties to file a list of all people who have had access to that information. My understanding is that some counsel have complied with this directive and some have not. If you all could please check to make sure that if you have not yet complied that you do so promptly.

1       The first order or the next order of business is to provide  
2 Mr. Subasic, who is here with us today, an initial appearance  
3 with respect to additional charges that have been brought  
4 against him.

5       Mr. Subasic, sir, the Grand Jury returned a superseding  
6 indictment, it's actually the second superseding indictment. It  
7 was filed in the Court on November 24th of 2010. This  
8 indictment includes additional charges against you and  
9 specifically it adds two additional counts against you.

10       Under the preceding indictment, you have been charged in  
11 Counts 1 and 2. Count 1 charging a conspiracy to provide  
12 material support to terrorists in violation of 18 USC, Section  
13 2339(a). And then Count 2, it charged you with conspiracy to  
14 murder, kidnap, maim and injure persons in violation of Title 18  
15 of United States Code, Section 956(a). Those two counts are  
16 carried over to the new indictment and the two additional counts  
17 that have been added are Counts 12 and 13.

18       And, Mr. Sun, am I correct that Mr. Subasic has access to  
19 the copy of this second superseding indictment.

20       MR. SUN: Yes, sir, your Honor.

21       THE COURT: Very good. Thank you, sir.

22       Mr. Subasic, I'm going to review with you the additional  
23 charges that are set out in these additional counts. Count 12,  
24 which appears on Page 20, charges a violation of Title 18 of the  
25 United States Code, Section 1425(a), and it charges specifically

1 that on or about December 2nd of 2003 in this district and  
2 elsewhere, you knowingly procured and attempted to procure,  
3 contrary to law, naturalization; that is, in applying to become  
4 a nationalized American citizen, you did respond, certify and  
5 swear untruthfully on your formal application for  
6 naturalization, form N-400, dated December 2 of 2003,  
7 specifically in that you, in question 17, represented that you  
8 had not ever been charged with committing any crime or offense,  
9 whereas in truth and in fact, as you well knew, you had been  
10 charged with committing crimes and offenses on at least ten  
11 occasions prior to December 3 of 2003, again, an alleged  
12 violation of Title 18 of United States Code, Section 1425(a).  
13 Count 13 charges a violation of that same statute, 18 USC,  
14 Section 1425(a), and specifically it alleges that on or about  
15 December 2 of 2003 in this district and elsewhere, you knowingly  
16 procured and attempted to procure, contrary to law,  
17 naturalization, specifically in applying to become a  
18 nationalized American citizen, you did respond, certify and  
19 swear untruthfully on your formal application for  
20 naturalization, form N-400, dated December 2, 2003, in answer to  
21 question 23 represented that you had not given false or  
22 misleading information to any U.S. government official while  
23 applying for any immigration benefit or to prevent deportation,  
24 exclusion or removal, whereas in truth and in fact, as you well  
25 knew, you had made false statements in regard to your criminal

1 history on an I-590 registration for classification as a  
2 refugee, which you filed on December 8 of 1997, wherein you  
3 responded to question 15, "Have you ever been charged with a  
4 violation of law?" With the answer, "I have not." And on an  
5 I-485 application to register permanent residence or adjust  
6 status, which you filed on August 24th, 1999 wherein you  
7 responded "no" to question 1 of part 3 which asked if you had  
8 ever been arrested, cited, charged, indicted, fined or  
9 imprisoned for breaking or violating any law or ordinance  
10 excluding traffic violations all prior to December 2 of 2003,  
11 again, this an alleged violation of Title 18 of United States  
12 Code, Section 1425(a).

13 Mr. Bowler, sir, are you in a position to advise Mr.  
14 Subasic, you or your colleague, Ms. Kocher, of the penalties he  
15 faces on these charges?

16 MR. BOWLER: Your Honor, both counts carry a maximum of ten  
17 years of confinement, \$250,000 fine, three years supervised  
18 release and, of course, the \$100 special assessment.

19 THE COURT: Now, is that -- Mr. Bowler, you say not more  
20 than ten years?

21 MR. BOWLER: Yes. There are aggravated circumstances under  
22 that statute which can produce a more serious cap, your Honor,  
23 but that's not the specific charge in those two counts.

24 THE COURT: Am I correct that if the aggravating  
25 circumstances are present, the penalty on each charge would go

1 up to 25 years, the maximum of 25 years imprisonment, a \$250,000  
2 fine, up to five years supervised release, not more than three  
3 year -- three years imprisonment upon revocation of supervised  
4 release and of course the \$100 special assessment?

5 MR. BOWLER: That's true. That would be if those charged  
6 offenses proved -- turned out to indicate that they were  
7 committed in furtherance of an act of terrorism, your Honor.

8 THE COURT: I see. Okay. Thank you.

9 Mr. Subasic, sir, let me remind you or indicate to you,  
10 sir, that you have all the rights with respect to these  
11 additional charges that you have with respect to the charges  
12 that were -- had already been brought against you, Counts 1 and  
13 2. Let me review some of these with you.

14 You have the right to remain silent. Nobody can require  
15 you to answer any questions or make any statements about the  
16 charges facing you including these additional charges which we  
17 have reviewed here today. This right can be waived. If you  
18 waive the right to remain silent, then anything you say may be  
19 used against you.

20 Now, as with the Counts 1 and 2 of the indictment, so with  
21 these additional counts, at a later date, you will be asked to  
22 plead guilty or not guilty to the charges against you. If you  
23 plead guilty, there will be no trial. You will be admitted --  
24 admitting that you committed the crimes charged.

25 On the other hand, if you plead not guilty, then there will

1 be a trial. At trial, you have several important rights. You  
2 have the right to counsel and to have one appointed if you  
3 cannot afford one. You will be presumed innocent. There will  
4 be no burden on you to prove anything. The Government must  
5 prove you guilty beyond a reasonable doubt. In addition, the  
6 Government must bring its witnesses to court. You or your  
7 attorney are allowed to cross examine these witness, that is to  
8 ask them questions, and this right stems from your right to  
9 confront witnesses against you.

10 You also, of course, have the right to present evidence on  
11 your own behalf, and this includes the right to subpoena  
12 witnesses, that is, the right to have the court issue orders  
13 called subpoenas directing witnesses to come to trial so that  
14 they may testify on your behalf.

15 You, yourself, have a choice as to whether to testify or  
16 not to testify, and this right derives from your right to remain  
17 silent. No adverse inference, that is no suggestion that you  
18 are guilty, is to be drawn from a decision by you not to  
19 testify. And, of course, the Judge will so instruct the jury.

20 And needless to say, sir, you do have the right to trial by  
21 jury with respect to these additional charges as well as the  
22 charges that have previously been brought against you.

23 You also, of course, have the right to counsel in  
24 connection with these new charges against you. And specifically  
25 with respect to these new charges as well as the others, you're



1 entitled under the constitution and the laws of the United  
2 States to be represented by an attorney during any questioning  
3 by the authorities and any line up and at all court proceedings.  
4 You may consult with an attorney before questioning may occur at  
5 any proceeding. If you are unable to obtain counsel, then  
6 counsel will be appointed. Appointed counsel may not be free.  
7 If you're found guilty, you may be required to repay part of the  
8 entire cost of appointed counsel. And, of course, counsel has  
9 been appointed for you. Your current counsel, of course, is  
10 Mr. Paul Sun.

11 Mr. Subasic, sir, have you heard everything I've said now  
12 with respect to these new charges against you?

13 MR. SUBASIC: I do not understand two additional charges.  
14 I don't know where they're coming from. Are they reflecting  
15 region of Bosnia and --

16 THE COURT: Ma'am, let me cut you off. And, Mr. Sun, could  
17 you confer with your counsel? Mr. Subasic, I'm going to have  
18 that question directed to Mr. Sun initially, and one reason for  
19 that is, I don't want you to say anything in open court here  
20 that could prejudice your case in any way.

21 MR. SUBASIC: I would like to say. It doesn't matter what  
22 it's going to be.

23 THE COURT: Well, I want you to confer with Mr. Sun, and  
24 then we'll take it from there.

25 MR. SUN: May it please the Court, he did have a question.

1 Mr. Subasic does have a question about what's pleaded in the  
2 second superseding indictment, and I think he is prepared and he  
3 understands and would like to have what he asked the interpreter  
4 to ask you to go ahead and ask that.

5 THE COURT: Okay. Very good.

6 THE INTERPRETER: I'm going to -- I want to repeat what he  
7 said but now I have to interpret actually what Mr. Subasic said.  
8 His question was basically two additional charges wrote on him  
9 in regards to naturalization law, it says ten counts of crime  
10 and that when he stated I have not committed any crime in his  
11 I-form for the location to register permanent residence. He  
12 would like to have more information who brought these charges  
13 and who provide this information. He's asking, are they  
14 reflecting time in Bosnia from '91 to '95. There is no law and  
15 there was a board of operations, and he was, as a Muslim,  
16 tortured on the Serb territory under Mr. Carthage (ph) under the  
17 war crimes of '98, that he was tortured, and he was the victim  
18 of Serbian aggression, so if these people -- the Serbs are  
19 bringing charges against him, he definitely is denying any of  
20 these so he believes that it is something that could be put  
21 against him here in the United States.

22 THE COURT: Okay. Thank you.

23 INTERPRETER: You're welcome.

24 THE COURT: Mr. Subasic, I understand your question. You  
25 and your counsel can work together in fashioning discovery, that

1 is, questions to the Government to explore, get more information  
2 about the facts that the Government is relying on in bringing  
3 these charges against you. You do have rights to attempt to  
4 obtain more information along those lines which Mr. Sun can  
5 explain to you.

6 The limited purpose of the proceeding here today is to make  
7 sure that you are aware of what the Government is charging you  
8 with. So it's really, in a sense, that initial step to make  
9 sure that you at least -- that you know what the accusations  
10 are. Down the line, there are processes and procedures that Mr.  
11 Sun can review with you, and you've certainly been involved with  
12 him in respect to the other charges, by which you can explore  
13 the validity of these charges and develop evidence addressing  
14 them. But that second step of looking behind the charges and  
15 trying to determine their validity and so forth, that's not our  
16 issue for today.

17 So my concern today, and it sounds as if you do based on  
18 your question, but I want to make sure that you understand these  
19 additional two charges that have been brought against you.

20 MR. SUBASIC: I have heard charge.

21 THE COURT: And you believe you understand them, sir? I  
22 know you question their validity.

23 MR. SUBASIC: It's just unbelievable for me, that's all,  
24 very just unbelievable.

25 THE COURT: Okay, sir. And you understood the penalty, the

1 explanation of the penalty?

2 MR. SUBASIC: I had heard that, yes. That was clear.

3 THE COURT: Very good, sir. Thank you.

4 Well, I believe that concludes, then, the initial  
5 appearance of Mr. Subasic with respect to the additional charges  
6 against you. Mr. Sun, is there anything further in that regard  
7 you believe we need to cover today?

8 MR. SUN: Not directly, your Honor, but one thing I want to  
9 bring to the Court was whether it would be appropriate to have  
10 some scheduling dates with regard to the new charges. In the  
11 scheduling order, there were deadlines associated with the  
12 original charges, times by which things had to be done, and I'd  
13 like to speak to the Court here, or if we have our individual  
14 session, that might be a better time, about putting in deadlines  
15 in place now that there are some new charges to be dealt with.

16 THE COURT: The Court would certainly be willing to  
17 entertain any proposal that you may wish to offer. I think  
18 absent the change in the deadlines to accommodate concerns such  
19 as that the deadlines that are in place would apply. And I  
20 understand that -- I gather from what you're saying you have  
21 some concern whether those are really workable with respect to  
22 the additional charges.

23 MR. SUN: That's it in part, your Honor, but also in part  
24 because one of the deadlines have already passed. There was a  
25 deadline for a severance motion back in August. There would, I

1 think, be some time within which we could make that kind of a  
2 motion with regard to the new charges or at least I'd like to  
3 approach the Court on that subject.

4 THE COURT: Well, certainly. I think if you seek relief in  
5 that regard, a motion is an appropriate means, but I'm certainly  
6 happy to discuss it with you at the conference today.

7 MR. SUN: Thank you, your Honor.

8 THE COURT: Mr. Bowler, Ms. Kocher, anything further with  
9 respect to the initial appearance of Mr. Subasic with respect to  
10 the additional charges brought against him?

11 MR. BOWLER: No. I believe discovery has been out some  
12 time and already done, but we certainly understand the request  
13 by Mr. Sun.

14 THE COURT: Very good. Thank you, sir.

15 Mr. Yaghi, sir, I wanted you to be here today at the first  
16 court proceeding involving Mr. Ayers. It would give you a  
17 definite opportunity to see him, and you may have seen him  
18 otherwise, I believe you have, but that was one reason to have  
19 you here.

20 I also wanted to express to you personally the high esteem  
21 in which the Court holds Mr. Ayers. Some care was taken in  
22 selecting counsel for you, and I think you're going from one  
23 very good lawyer to another very good lawyer, so I believe  
24 you're in good hands with Mr. Ayers as you were with  
25 Mr. McCullough who, as you now know, has returned to the Court

1 of Appeals as a judge in the State system.

2       Very good. Let's turn now to the topics we typically  
3 review at our -- in general session here. And the first step is  
4 always transcripts. So, Ms. Graves, any update with respect to  
5 the transcript situation?

6       MS. GRAVES: Your Honor, I'm not aware of any problems  
7 since our last conference so I think everything is going fine  
8 with the role of completion of transcripts for the Court.

9       THE COURT: Okay. Very good. Because I believe the  
10 Government's met its obligations. The Government's out of the  
11 transcript business for the time being.

12       MS. KOCHER: That's correct, your Honor, we're just  
13 awaiting any proposed objections or changes at this point.

14       THE COURT: Okay. And then at the end of this month is the  
15 deadline for defense objections or consents to the Government's  
16 proposed changes to the Government designated -- designations of  
17 the existing transcripts, and then, as well, on the same date,  
18 defense designations and proposed changes -- their proposed  
19 changes with respect to the existing transcripts. And then the  
20 end of next month, February, of course, is the deadline for the  
21 defense proposed transcripts for all remaining defense  
22 designated audio.

23       MS. GRAVES: Your Honor, I would note that Mr. Sun raised  
24 the question through email regarding the raising in the order  
25 using the term "existing transcripts." It has no relevance to

1 him since he hasn't been in this case throughout, and, frankly,  
2 I was having trouble remembering myself exactly what the term  
3 "existing transcripts" refers to with the two different  
4 deadlines. And I told him I believe the term "existing  
5 transcripts" was referring to those transcripts that were  
6 initially available and provided to the Government way back in  
7 the beginning, but I could not recall exactly what disk numbers  
8 those were referring to. So it might be better to allow him to  
9 just deal with the transcripts however he needs to instead of  
10 relying on that phrase "existing transcripts" because it has no  
11 relevance to him.

12 Do you understand what I'm saying? He wasn't in the case  
13 back when we were getting things in on a rolling basis.  
14 Instead, he now has everything. And so the use of the term  
15 "existing transcripts" for him, you know, that doesn't really  
16 make much sense for him.

17 THE COURT: I understand. Well, I'll be happy to hear from  
18 him on that. The term "existing transcripts" was used in one of  
19 the orders early on, and it was a defined term in one of the  
20 orders, and I can't give you the docket number for that off the  
21 top of my head, but it was the defined term that in the context  
22 at the time was an appropriate distinction to make. It was  
23 meaningful at the time, and I think served the parties well, but  
24 at this -- towards the tail end of this process, I understand  
25 the point you're making.

1 Mr. Sun, did you wish to be heard with respect to that?

2 MR. SUN: Ms. Graves has stated the question that I made,  
3 and I also talked with Ms. Kocher about that, too. I understood  
4 that that was a term of art. I didn't appreciate that there was  
5 an order that had defined it, but I did have, again, a question  
6 distinguishing within the total weight what that -- what that  
7 meant in terms of what was the January 31st deadline was  
8 appropriate at that time.

9 MS. GRAVES: I think that would apply to Mr. Ayers as well.

10 THE COURT: Mr. Ayers, did you wish to be heard on that  
11 issue at this time?

12 MR. AYERS: No, your Honor.

13 THE COURT: Well, I think, again, I come back to the point  
14 with respect to all the parties, the deadlines that are in place  
15 remain in place, and if a party seeks relief from those  
16 deadlines, a motion is an appropriate vehicle so it can be fully  
17 flushed out. But, again, I'll be happy to discuss it on an  
18 informal basis at the status conference today.

19 Anything further from any of the parties with respect to  
20 transcripts?

21 ALL PARTIES: (No response.)

22 THE COURT: Mr. McAfee, are there any issues arisen that  
23 you're aware of with respect to hard drives?

24 MR. McAFEE: No, your Honor. I sent out the usual email to  
25 defense counsel and have received no indication there has been



1 any problems. I do have one issue to address to the Court with  
2 my case, but we can do that later.

3 (Mr. McCullough entered the courtroom.)

4 THE COURT: Okay.

5 Mr. McCullough, sir, how are you?

6 MR. McCULLOUGH: I was in another court. May I approach  
7 and take a seat?

8 THE COURT: Certainly. Good to have you here.

9 Any other counsel wish to be heard at all with respect to  
10 hard drives?

11 ALL PARTIES: (No response.)

12 THE COURT: Very good.

13 Mr. Hill, I think the paper discovery area has been normal  
14 for a long time. Does it remain so?

15 MR. HILL: Yes, your Honor, that's correct.

16 THE COURT: Any party wish to be heard with respect to  
17 paper discovery at all?

18 ALL PARTIES: (No response.)

19 THE COURT: That gets us to international depositions. The  
20 deadline for filing motions for such depositions is coming up  
21 the end of this month, and we are in the -- about to lose the  
22 liaison that we appointed.

23 MR. McCULLOUGH: I nominate my successor, your Honor.

24 THE COURT: Well, we can add Mr. Ayers. I don't know how  
25 many international -- more international depositions we're going

1 to have to be dealing with. We could -- I'm prepared to appoint  
2 Mr. Ayers, but Mr. Boyce here has been the liaison for other  
3 matters, and he hadn't been real busy.

4 MR. BOYCE: Mr. Ayers is much more handsome. I second it.

5 MR. McCULLOUGH: I second and third it.

6 MR. BOYCE: Your Honor, I'll work with Mr. Ayers. The two  
7 of us will talk about that.

8 THE COURT: Okay. That would be great. Thank you.

9 Do any parties wish to be heard with respect to  
10 international depositions?

11 ALL PARTIES: (No response.)

12 THE COURT: Very good. We've had -- we have additional  
13 deadlines. The end of this month is a big deadline day, as you  
14 know from the schedule that's been in place. Motions regarding  
15 general and sensitive but unclassified discovery are due as well  
16 this month.

17 Do any parties know at this point whether they'll be filing  
18 any such motions? Mr. Zeszotarski, you anticipate --

19 MR. ZESZOTARSKI: I think there will be a few, your Honor.

20 THE COURT: Okay. Folks, are there any other issues that  
21 you believe can appropriately be taken up during our general  
22 session here?

23 ALL PARTIES: (No response.)

24 THE COURT: Why don't we talk then about scheduling our  
25 next conference, our next status conference. Six weeks from

1 today would be the week of September 21st, I believe. Excuse  
2 me. February, not September, February. February 21st, and  
3 Tuesday would be the 22nd. I'd like to set it -- absent  
4 objection, I'd like to set our next status conference for  
5 Tuesday, February 22nd at 10:00 a.m. Hearing no objection that  
6 will be our setting.

7 Mr. McCullough, I'm going to ask you a question with  
8 respect that relates to the pending motion regarding the  
9 proceeding in Amman, Jordan, and I don't know whether you want  
10 me -- it deals with the identity of the interpreter that was  
11 used. And I don't need to ask a name. I'm interested in a --

12 MR. McCULLOUGH: It was the person that I had originally  
13 had attempted to depose?

14 THE COURT: Yes.

15 MR. McCULLOUGH: He was the interpreter for the deposition.

16 THE COURT: So that's the uncle of the defendant.

17 MR. McCULLOUGH: Yes, sir, of my client.

18 THE COURT: Okay. Very good. Thank you, sir. That was my  
19 impression from reading the transcript, and I wanted --

20 MR. McCULLOUGH: In fact, I had arranged for somebody else  
21 to be the interpreter on that particular day, and he wanted to  
22 be compensated in an exorbitant amount on the day of the actual  
23 deposition, and so Mr. Yaghi stepped forward and acted as  
24 interpreter, and I don't think there's any question that he was  
25 sworn and agreed to interpret, and he lived here in this country

1 for a long time and knew English.

2 THE COURT: Okay. Very good. Well, I'm not trying to open  
3 up reargument of it --

4 MR. McCULLOUGH: Yes, sir.

5 THE COURT: -- but I appreciate you answering my question.

6 Mr. Bowler, as I said, I'm not trying to reargue the  
7 motion, but I'll turn to you. Do you have any comment or wish  
8 to be heard at all? Again, I'm not trying to reargue this.

9 MR. BOWLER: I mean, we have various arguments we filed,  
10 your Honor. We're not waiving any of those. From our  
11 perspective needing to use the defendant's uncle as a translator  
12 for something they'll offer in court speaks to all the  
13 procedural issues which, in the Government's view, preceded  
14 that.

15 THE COURT: Okay. Thank you, sir.

16 Folks, what I'd like to do now is really turn the floor  
17 over to Jolie Skinner and Janet Callahan to provide information  
18 regarding some of the filing-related issues that have come up in  
19 the case that were the subject of Judge Flanagan's order on  
20 December 30.

21 I want to remind counsel that I realize that in some of  
22 your offices you may have staff persons handling the filing, but  
23 the Court's looking to you to do it correctly, so if something's  
24 not done properly, the buck stops with the lawyer.

25 So with that in mind, ladies.

1 MS. CALLAHAN: Hi, I'm Janet Callahan. I know most of the  
2 attorneys, and I know that you know me. I've been here longer  
3 than any of you have been here, most of you anyway.

4 And now, I was case manager for Judge Howard for too many  
5 years to speak of and courtroom deputy for him, but right now  
6 I'm trainer for case management in the district and the  
7 supervisor for the quality control of the electronic filing  
8 system.

9 And over here to my left is Jolie Skinner, and she is our  
10 operations manager for the district, and when we get through, if  
11 we have time, and if not, then you can call us in the clerk's  
12 office if you have any questions about what I have to talk about  
13 this morning.

14 The Court's asked me to speak this morning just to bring up  
15 the date on the quality control, and this just doesn't apply  
16 just to this docket, but dockets throughout the whole district,  
17 and it's not pointing fingers or pinpointing just in this case,  
18 but there are particular policies and procedures and rules and  
19 regulations that we need to follow.

20 And this is an important docket, and there's a lot of  
21 filings in this docket, so they've assigned me and Jolie as back  
22 up to audit the entries just to make sure that we have a clean  
23 and concise docket. And so I'm going to go over a few of the  
24 errors.

25 Before I did -- or before I do go over those, I know a lot

1 of you have been to seminars where I've had to speak at the  
2 seminars, the CJ panel, and the Federal public defenders, and  
3 you've heard some of these things over and over and over again,  
4 and I apologize if you have, but the same errors and the same  
5 things happen over and over, and that's why we have to have  
6 these meetings.

7 And I'll let you know that Judge Howard used to say all the  
8 time in the courtroom when I was in there, if someone kept  
9 saying the same thing over and over, and he would make the  
10 statement, "We've plowed this field long enough, let's move on."  
11 But in quality control, that doesn't apply because it's an  
12 ongoing effort to keep the docket clean and concise so we have  
13 to keep plowing the field over and over in quality control.

14 And so I'll briefly cover some of the most common errors  
15 that pertain to the electronic filing. First, I'll cover the  
16 memorandum and support. Can all of you hear me? I just want to  
17 make sure that you can hear me.

18 ALL PARTIES: (No response.)

19 MS. CALLAHAN: The first error is no memorandum in support  
20 of a motion. All motions made other than in a hearing or trial  
21 shall be filed with the supporting memorandum. Now, I bulleted  
22 these particular areas. If you have a question in between, you  
23 know, raise your hand, interrupt, if not, at the end of whenever  
24 I get through, we can talk about it or if you need, to call the  
25 clerk's office.

1       Next, the memorandum does not have a basis for filing the  
2 document under seal. The memorandum needs -- when you file a  
3 motion to seal, your memorandum must state a basis for filing or  
4 requesting this document be filed under seal. The memorandum is  
5 incorporated into the motion, but there's no reference of the  
6 memorandum in the caption or the title or the docket entry. I  
7 mean, we may have a motion to continue, but -- and there's a  
8 memorandum in support, but it doesn't state it on the docket,  
9 and it may not even state it on the document itself, but we  
10 need -- if your document states that it is a motion to compel  
11 with the memorandum in support of that, then that needs to be  
12 stated within the entry, the text on the document. It all needs  
13 to flow so it's an easier docket to identify. Whenever the  
14 court staff, chambers, our court users and our clerks and the  
15 public go to the docket, it's hard to identify this document if  
16 you don't describe it the same on the docket as you have the  
17 document.

18       If there are issues as far as it goes with memorandums in  
19 support, we're going to come back to the rules -- local rules  
20 committee and we've discussed this this morning with the clerk  
21 and -- yes, sir.

22       MR. BOYCE: Is the preference for short motions that we put  
23 in the caption motion and incorporate in memorandum of law --

24       MS. CALLAHAN: Correct.

25       MR. BOYCE: -- the preference?

1 MS. CALLAHAN: Yes. Thank you. Now I'll go over some  
2 service errors that we're having problems with on the docket,  
3 and it's not just this docket, it's throughout the whole  
4 district, but we're being specific about this one today.

5 Documents filed with no certificate of service. A  
6 certificate of service is required for all documents filed with  
7 the Court. Certificate of service is incomplete, must state  
8 specifically in your certificate of service, the name of the  
9 document being served, the date it's served, the full name and  
10 address if served by mail or the individual being served, and  
11 the manner of service. If it's email, U.S. mail, whatever way  
12 you're serving, that needs to be stated on the certificate of  
13 service. It is not sufficient to state that service has been  
14 made on all counsel of record or service has been made on  
15 defense counsel or Government. We need a specific name or the  
16 Court is requiring a specific name to appear on the certificate  
17 of service. We're noticing that the certificate of service  
18 incorrectly states that a public document was served by method  
19 of CMECF. All public documents are served by CMECF. The minute  
20 a public document is docketed, it goes out, electronic filing  
21 goes out, a party receives the CMECF, therefore that language  
22 does not need to be included in a certificate of service because  
23 it's automatically done.

24 The certificate of service must reflect that all counsel in  
25 the case have been served unless the filing is an ex parte or an



1 order to serve specific parties by the Court. The certificate  
2 of service incorrectly states that a sealed document was served  
3 by CMCEF. Criminal sealed documents can never be served through  
4 CMCEF, through the electronic filing. Opposing counsel received  
5 an NEF but can't view the document. Service must be made in  
6 another manner such as an email, U.S. mail, fax, whatever way,  
7 it has to be made in another manner, but you will not receive --  
8 they would not be able to open up the document and view the  
9 document, then you have to make service through other means.

10 Please note, service cannot be made by electronic  
11 transmission unless the attorney has expressly consented in  
12 writing to sent service to the opposing party or to the parties  
13 within the case.

14 Now I'm going to go over just a few things on the sealing  
15 errors. The motion to seal must be filed under seal, and the  
16 motion to seal must be a public docket entry of a public -- I  
17 mean a public PDF. The party may move the memorandum be filed  
18 and sealed, but the motion to seal must be a public docket entry  
19 and document the PDF. All parties must file a public notice of  
20 filing under seal in lieu of a motion to seal and does not  
21 require the Court's approval when filing or referring to the  
22 sensitive discovery material pursuant to the Court's order of  
23 12-30-2010. And I do not have that docket entry, but if you  
24 could refer to that order.

25 Some proposed orders errors. The proposed order is not

1 being attached to the motion. Whenever possible, please attach  
2 the proposed order to the motion. The proposed order on a  
3 motion to seal must not include the language that we request the  
4 motion to be sealed. Both of these documents, the motion and  
5 order, are public.

6 This is just a docket in request by the Court -- I mean by  
7 the clerk's office. When docketing sealed motions or documents,  
8 any type of document, please give us as much description as  
9 possible in the corresponding text box. When you're making the  
10 docket entry, you'll get a text box, and if you can put as much  
11 information as possible without going to the guts of the body of  
12 what you're requesting but just as descriptions because what's  
13 happening is we're going back on the docket and the Court's  
14 going on the docket and their staff, and everything on the  
15 docket looks alike. It's a sealed document, sealed document,  
16 but the sealed document -- and I realize that we've asked you to  
17 be as generic as possible in this, but I've almost, in the  
18 training classes, asked that you be -- I'll put the blame on  
19 myself because in the training I said, be generic, be generic  
20 whenever possible.

21 So we need a little bit of reference of the description of  
22 the documents so when we're linking and referring back to the  
23 other documents that it's referring to that it's easier to  
24 detect because what's happening right now is we're having to  
25 open up every single document if we do not have a link to that

1 other document. We're having to open them up and find them and  
2 doing a lot of searching that if we had just some small  
3 description then it wouldn't take near as long for chambers and  
4 the Court to search for these documents, such as a sealed motion  
5 to compel, that would be read, "Proposed sealed motion to  
6 compel," added to compel in the text box. It's just that  
7 simple. And with the massive amount of docket entries made, it  
8 would be much easier to pinpoint these documents that we're  
9 searching for if the parties would include this language.

10 Whenever necessary, link your filing to the motion or order  
11 that is related. For example, a response to a motion or a  
12 response to an order, link as much as possible because that  
13 helps a lot, also. I may have said this before, and it is so --  
14 and just like Judge Gates said just a few minutes ago, it is  
15 left up to you to make sure this docket is right, great, but we  
16 realize that all these attorneys and everybody's busy, and when  
17 you do have staff in the office, and they have to be trained  
18 properly, they have to understand what's going on, and we're  
19 here in this office to make sure that they understand. And if  
20 you're here and you're not the attorney that makes these docket  
21 entries, it is just imperative that your staff is trained  
22 properly, and if they feel uncomfortable and they feel -- if  
23 they pause one second when they're making a docket entry, then  
24 they need to stop and make a phone call to our office because  
25 that's all it takes.

1 I'm Janet Callahan. My number is going to be on the  
2 handout, Jolie Skinner's number is on the handout, our  
3 operation's mana- -- our chief deputy, her number's on the  
4 handout that you're going to get, and we just want to make sure  
5 that -- I mean, if we -- there's so many times that one little  
6 phone call would have stopped a notice of deficiency, and  
7 believe me, that's the last thing that I want to send out or  
8 that I want to direct the persons on the team to send out, and  
9 as much as possible we'll confer with you and try to keep from  
10 doing this. It's not that we're doing it because we want to put  
11 a notice of deficiency because believe me, we do not. But  
12 sometimes that's the only way we -- and if you have to refile  
13 something, then we have to enter the notice of the deficiency.  
14 But if it's something that we're trying to remind you of, like,  
15 in the future, please do this or in the future, please do that,  
16 then I'll send just a notice to the counsel. It doesn't stand  
17 out on the docket like a sore thumb, and it doesn't make it  
18 as -- it doesn't come to notice to the Court, and what -- you  
19 know, we don't want the Court to look at the document seeing  
20 notice of deficiency when we could have put a notice to counsel,  
21 just to send a note. If I can make a phone call -- but when I  
22 make a phone call, I make a note. So I just need if any of you  
23 have any questions now, I'll be glad to answer your questions,  
24 Jolie will, if not, and you're ready to go forward, when you get  
25 back to your offices, call me or have your staff call me and

1 please share these handouts with your staff.

2 THE COURT: Any questions, folks? These are the experts.

3 MS. CALLAHAN: They'll call me.

4 MS. SKINNER: Judge, can I pass these out?

5 THE COURT: Sure. Thank you.

6 MS. CALLAHAN: Thank you so much. Thank you for this time.

7 MS. SKINNER: If you need any extras, we'll be glad to  
8 email them to you.

9 THE COURT: Thank you very much.

10 MS. CALLAHAN: You're welcome.

11 THE COURT: Ms. Callahan referenced Judge Flanagan's  
12 December 30 order, I believe, document number 693. We talked  
13 earlier about what the term "existing transcripts" means. It's  
14 defined in the order that's at docket entry 287 at the bottom of  
15 Page 2 running over to Page 3. It refers to transcripts  
16 received by the Office of the Federal Public Defender on or  
17 before the date indicated in this order and this order was  
18 entered on April 2nd of 2010. And I believe at one point the  
19 Federal Public Defender's Office was maintaining a list of  
20 transcripts and the date of receipt from the transcription  
21 company, so that puts the meat on the bones of what "existing  
22 transcripts" means or has meant in the case, whatever its  
23 current relevance is going to be as we discussed for the -- at  
24 least some of the defendants.

25 Very good, folks. I think that covers the matters that the

1 Court was interested in covering at our general -- general  
2 session here. What I'd like to do now is meet in closed session  
3 with defense counsel as a whole, but as is our practice, if  
4 Government's counsel could remain available because I would like  
5 to meet with you later on. Can we reach you at your offices?

6 MS. KOCHER: We'll pass up cell phone numbers, your Honor.

7 THE COURT: Okay. Very good. Thank you.

8 Ms. Kocher, Mr. Bowler, if I could ask you if you could  
9 please leave at this time, and we'll let you know when we need  
10 you to return.

11 MR. BOWLER: We can take a hint, your Honor.

12 THE COURT: And if I could ask security folks, we're going  
13 to need to have those in the public gallery leave as well  
14 because we need to speak in closed session with defense counsel.

15 MR. McCULLOUGH: Judge, could I leave and come right back?  
16 I left my coat in the other courtroom, and I'm afraid if they  
17 get finished --

18 THE COURT: You may, sir. I just note to let the CSO that  
19 you're about to return.

20 MR. BOYCE. Your Honor, may I leave --

21 THE COURT: Yes, sir. We can probably take a five-minute  
22 recess.

23 (Recess taken from 11:10 to 11:20.)

24 THE COURT: I believe we're still awaiting Mr. Yaghi's  
25 return so we can be at ease until he returns.

1       Very good, folks. Mr. Yaghi has returned to the courtroom.  
2 We are in closed session with defense counsel. Before I inquire  
3 of counsel as a group regarding the various areas of discovery  
4 and case preparation generally, I just want to remind counsel  
5 that as part of my preparation for these status conferences, I  
6 do review the CJA vouchers, and we don't often discuss them, and  
7 one reason we don't discuss them is -- well, let me put it this  
8 way: I'll discuss them if I think they indicate some issue,  
9 some problem. I don't intend to discuss them at this session  
10 because I don't perceive the numbers any potential issues  
11 presented, but that is an ongoing part of my preparation for  
12 these status conferences, and I want just to remind you that it  
13 is.

14       Let me inquire then to defense counsel as a group with  
15 respect to these various areas of discovery any issues regarding  
16 transcription, transcripts that we need to discuss in closed  
17 session here.

18       ALL PARTIES: (No response.)

19       THE COURT: How about computer hard drives? Mr. McAfee,  
20 did you want to talk about that separately?

21       MR. McAFEE: Yes, your Honor.

22       THE COURT: That'd be fine.

23       For the group, any issues regarding computer hard drives?

24       ALL PARTIES: (No response.)

25       THE COURT: How about paper discovery?

1 ALL PARTIES: (No response.)

2 THE COURT: Anything with respect to international  
3 depositions? Mr. Ayers, sir.

4 MR. AYERS: This is obviously -- depending on what the  
5 Court's ruling is, at some point on the foreign issues, I may  
6 very well have to file a motion to redo those or follow up, and  
7 I don't think we need to cross that bridge today.

8 THE COURT: I agree.

9 MR. AYERS: I'll just file a motion to redo it if  
10 necessary.

11 THE COURT: Yes, sir. Any issues with respect to experts?  
12 Any other services that defense counsel are using?

13 ALL PARTIES: (No response.)

14 THE COURT: Any other issues for the group? Any problems  
15 that the group "as a whole" is having in case preparation,  
16 anything the Court can help with?

17 ALL PARTIES: (No response.)

18 THE COURT: Well, good. Mr. Ayers.

19 MR. AYERS: Your Honor, I really have a -- obviously, the  
20 logistics are coming in at this point, and I'm trying to come up  
21 to speed, and I'll let you know in these other areas, but I do  
22 have some budgeting issues. I didn't know if I should just  
23 speak to you directly in front of everybody or how you want to  
24 handle that or if you want to do it as a group. It doesn't  
25 matter to me.



1 THE COURT: Why don't we meet -- I'll meet with both you  
2 and Mr. McAfee individually, and that's -- just so you know,  
3 Mr. Ayers, that's a standard part --

4 MR. AYERS: That's fine.

5 THE COURT: -- of conferences so that's not unusual to be  
6 bringing that.

7 Well, I take it then from -- I take it then that, generally  
8 speaking, counsels on track, feels comfortable where they are in  
9 case preparation, nothing that the Court can help with at this  
10 point. Okay.

11 Now, I would like to go around and just check in -- just  
12 give individual counsel now a chance to speak about their  
13 respective cases. I'll do it with Mr. Ayers and Mr. McAfee in  
14 closed session, but let me turn to you, Ms. Graves, any --

15 MS. GODWIN: I think this is my speaking turn. I'm  
16 guessing that we're going to ask where we are in review of the  
17 discovery materials?

18 THE COURT: Yes.

19 MS. GODWIN: We are on track.

20 THE COURT: Very good. And that's across the board with  
21 respect to the paper, hard drive, the transcription and so  
22 forth.

23 MS. GODWIN: We're comfortable with where we're at. I  
24 think the only real challenge we're facing, and if necessary,  
25 we'll address that in a motion. We have a lot of cross

1 references that the Government has provided their designations  
2 against what we might designate separate from that because of  
3 the amount of audio we have with our particular client.

4 THE COURT: Yes.

5 MS. GODWIN: And so if we have any trouble completing  
6 everything by that deadline, we'll address that in a motion, but  
7 that will be at the time.

8 THE COURT: Okay. Very good. Mr. Sun.

9 MR. SUN: Your Honor, I'm not sure what's appropriate in  
10 the general session versus an individual session.

11 THE COURT: I'll be happy to meet with you separately.

12 MR. SUN: Thank you, your Honor.

13 THE COURT: Okay. Very good. Mr. Hill, sir.

14 MR. HILL: Your Honor, I'm hoping to have everything done  
15 by January 31st. I had that problem with my paralegal, my  
16 secretary legal --

17 THE COURT: Yes.

18 MR. HILL: -- not doing anything for two months,  
19 October/November, but I've got my computer expert tech with the  
20 paralegal end, and so as far as computer, the computer is on  
21 stand still now, but Joe and I are comfortable with that. He's  
22 not working on the computer. He's totally working on the  
23 transcripts.

24 The only problem I've got is I've got a superior court  
25 judge who doesn't like the Federal system, and he set a murder

1 case for me January 24th and that could cause a problem, quite  
2 frankly because my computer expert and paralegal has been  
3 working hard on the transcripts all of December and January, and  
4 we had planned to spend the next three weeks together and that  
5 might cause some motion to be filed, but I'm trying to get that  
6 murder case continued, your Honor.

7 The only other thing I see here is motion for foreign  
8 depositions. At this point in time, I'm not planning on taking  
9 a foreign deposition, but I anticipate some classified material  
10 being dropped in our box, and once I review that classified  
11 material, I anticipate having to go take a foreign deposition.

12 THE COURT: I see. Okay. Well, if the Court can assist  
13 with the scheduling conflict, obviously, if you seek relief from  
14 this Court with that respect at all.

15 MR. HILL: You can't impeach a superior court judge, can  
16 you?

17 THE COURT: No, I cannot.

18 MR. HILL: Just asking, Judge.

19 THE COURT: Mr. Zeszotarski, sir.

20 MR. ZESZOTARSKI: Good morning, your Honor. Likewise, I'm  
21 comfortable with where I am and working hard on all these  
22 deadlines for the 31st. I feel very comfortable that three of  
23 the four will not be a problem. Like Mr. Daniel Boyd's counsel  
24 as to the designation portion of things, it may be that I wind  
25 up, if I need to, filing a motion and producing some and asking

1 for an extension as to some more but working hard to get there.

2 THE COURT: Okay. Well, that's good because, you know, the  
3 schedule, there's not a lot of fat in this schedule. Enough  
4 said.

5 Mr. Boyce.

6 MR. BOYCE: Morning, your Honor. We're on schedule,  
7 working hard on some pretrial motions to be filed by the 31st.  
8 I echo what Mr. Hill said about the potential for subsequent --  
9 well, after the deadline asking for international depositions if  
10 they drop either jinx materials or the classified discovery on  
11 us that we don't have. Nothing else right now.

12 THE COURT: Okay. Very good. Thank you.

13 Well, I think that takes us then to the Court meeting  
14 separately with Mr. McAfee, Mr. Sun and Mr. Ayers and  
15 Mr. McCullough. Have I left anybody out?

16 ALL PARTIES: (No response.)

17 THE COURT: Okay. Very good. Well, then why don't I  
18 excuse -- I'll just take them in the order that you're seated  
19 here. So why don't we start with you, Mr. -- well, actually,  
20 Mr. Sun, why don't we start with -- I'm going to reverse myself  
21 on this, Mr. McAfee. Mr. Sun and Mr. Ayers both have their  
22 clients here so why don't we begin with -- we'll begin with you,  
23 Mr. Sun, and then we'll take Mr. Ayers and come back to you,  
24 Mr. McAfee.

25 So if I could ask everybody to leave the courtroom except

1 for Mr. Sun and his client and the interpreter and of course  
2 court person.

3 MS. GODWIN: Does that conclude us for the day?

4 THE COURT: Yes. It concludes those defense counsel who  
5 are not meeting individually. Thank you for being here.

6 Yes, ma'am.

7 INTERPRETER: Mr. Subasic has told me right now that he  
8 would like to speak English as much as he's able and then if he  
9 does not understand, I can stay and help.

10 THE COURT: That's fine.

11 Mr. Sun, my general question I would have for you, sir, is  
12 how are you finding the transition is going?

13 MR. SUN: We are actually making progress, your Honor.  
14 What I wanted to raise and report to the Court, I've honestly  
15 been a little surprised with the quality or the lack of setting  
16 in the transcripts. That was not -- I certainly have seen some  
17 interchanges in just reviewing the file, trying to get  
18 transcripts in better shape and my impression was that was --  
19 there was a substantial amount of progress that was made. What  
20 I didn't appreciate was, even so, I guess, in my judgment the  
21 quality of the transcripts is -- you know, varies from okay to  
22 really not very good at all. And so relying on the transcripts  
23 for much of anything is a bit of a dicey proposition. And so in  
24 terms of organizing my thinking and focus for the case  
25 preparation, the idea of relying on the transcripts, I've had to

1 downgrade that. That is something that I can -- I can really  
2 rely on, I think is the best way to put it. So that --

3 THE COURT: Let me --

4 MR. SUN: Certainly.

5 THE COURT: Let me ask you, Mr. Sun, does that include the  
6 transcripts that the Government has produced? I mean, I realize  
7 there may be an interest in checking behind them.

8 MR. SUN: Where they have designated, for example,  
9 your Honor?

10 THE COURT: Yes, sir.

11 MR. SUN: In fact, yes. We found in going through the  
12 depositions to try to find corrections, for example, that there  
13 are a varied number of things that we found and will put in a  
14 counter designation, if you will, to seek corrections of what  
15 the Government is correcting. And so I think -- that was  
16 honestly one of the first things that I noticed that when we --  
17 when I looked at what the Government has designated, there's so  
18 many changes that they propose that, I guess, is a commentary on  
19 the quality of the original transcript, number one.

20 And then number two, as we've gone through that finding  
21 occasions, regular occasions where we think there needs be  
22 further corrections beyond -- beyond that, and so, again, I  
23 think, honestly, it goes back to the original transcripts and  
24 not anybody -- I'm not unique in this, obviously, not anybody  
25 having a baseline, if you will, to work from that that is very

1 good, I guess is the right way. So in -- in our focus that, in  
2 terms of getting the work, we've been obviously deadline driven  
3 and everybody is new that I've got working on this, myself  
4 included, and we've gotten better. I mean, everybody gets --  
5 you're more able to recognize speakers, you're more able to  
6 recognize words and phrases that you're -- as you're listening.

7 And, I guess, again, the point that I wanted to relate to  
8 the Court is we're not getting a lot of help, as much help as I  
9 would have expected just sort of reviewing, reading through the  
10 transcripts, I guess. That's been a hindrance to our ongoing  
11 efforts to complete all the work that we need to do.

12 But in light of all that, you know, even as recently as  
13 last week I put two more new people on this in light of, again,  
14 recognizing that it takes people getting up to speed, but I  
15 don't have enough currently people -- people currently who are  
16 working on it to make sure that I can -- I can try to meet those  
17 deadlines. Frankly, the slower process that we have is in  
18 dealing with what we're dealing with.

19 So it'll be helpful if we'll go back and coordinate with  
20 Ms. Graves in terms of making sure I understand exactly what are  
21 the existing transcripts that are the substance of the January  
22 31 deadline versus a later deadline. And if I need to approach  
23 the Court for relief, I'll obviously talk to Mr. Bowler and  
24 Ms. Kocher before that, but I think generally that's where we  
25 are.

1 THE COURT: Okay.

2 MR. SUN: So I think the thing that I wanted to, I guess,  
3 just alert the Court to is, your Honor asked me at the last  
4 status conference sort of where I was, and I think the thing  
5 that's become most apparent to me is that relying on the  
6 transcripts for much of anything is questionable. It's a bit of  
7 a dicey proposition so that engenders more work sort of from the  
8 ground up.

9 THE COURT: I understand what you're saying. As I think  
10 you know, the issues of transcript quality were (A) focus, if  
11 not a major focus, if not the primary focus of the status  
12 conferences that we had held in this case early on when we first  
13 started holding them, and I know progress has been made, so I  
14 understand, with respect to quality, and I'm sorry to hear  
15 that -- that from what you're saying there's still some profound  
16 issues, but I understand -- I understand the background.

17 MR. SUN: Well, as I say, that was my -- just in reading  
18 the file, my impression was that there had been substantial  
19 progress made, and I'm sure that was the case, but the baseline  
20 at the end of that that we're using, I guess, is sort of what --  
21 at least in my judgment the way we found it at this point.

22 THE COURT: I understand. Okay.

23 And I think from what you said, Mr. Sun, it sounds as if  
24 you're diligently addressing the issue. Notwithstanding the  
25 prior problems and existing problems with transcription, the



1 deadlines are a fact of life for everybody.

2 MR. SUN: Sure. I understand.

3 THE COURT: I know you're extremely sensitive to that.

4 MR. SUN: Understood. And in that respect, I don't need to  
5 put him in front of the Court, but Mr. Subasic has been an  
6 extraordinary help. He's been working very closely, including  
7 myself and my paralegal, and so we're able to make,  
8 collectively, good progress with all of that.

9 THE COURT: Good.

10 MR. SUN: And he's really the one who, right as I got  
11 involved, was able to say, look at this. You can't really rely  
12 on these transcripts. Look at all these problems. You know, he  
13 identified particular things for me to listen to, compare to the  
14 transcripts and say, look, these are still not -- you know, not  
15 only are the baseline transcripts not very good, but even  
16 ones -- I don't mean to demean the work that's been done, but  
17 suffice to say with directed focus, it became clear to me even  
18 sooner than it might have been just kind working through it on  
19 my own because of, you know, the experience that Mr. Subasic had  
20 and with his -- you know, with Mr. Wiles, obviously, before that  
21 they were working through that as well. But that's what I  
22 wanted to --

23 THE COURT: Good. Well, I'm glad you did.

24 MR. SUN: -- just by way of background.

25 THE COURT: That's fine. I'm glad you have a good working

1 relationship with Mr. Subasic as well. That's good.

2 MR. SUN: And in that light, I'm not sure yet whether I'll  
3 go through this by way of motion but just wanted to advise the  
4 Court.

5 Because of the security procedures that Mr. Subasic is  
6 subject to, the only time that he can -- and I'm sure that  
7 your Honor is aware of this, the only time that he can actually  
8 listen to the tapes is when either I or my paralegal go over  
9 there with the computer to listen to -- I made efforts to try to  
10 work out a different process so that he could have access to a  
11 computer himself. So far that has not been born fruit. If they  
12 don't, I think it will be -- I will approach the Court with that  
13 because I do think that's -- it's an essential part of, I think,  
14 Mr. Subasic's rights but also in the case preparation to give  
15 him maximum access to the ability to actually listen to the  
16 recorded evidence as well as just read it.

17 Again, that sort of goes back to my first point. He  
18 certainly had all of the transcripts, you know, going way, way  
19 back but relying on those to understand what's going on in this  
20 particular incident, whatever it is, is -- is, you know, a bit  
21 of a dicey proposition. So I'll continue to work on that front.

22 THE COURT: Good.

23 MR. SUN: And I won't raise it to the Court unless I need  
24 to but just wanted to advise the Court.

25 THE COURT: I'm sure you know from Mr. Wiles and looking at

1 the file that there had been discussions with the folks at the  
2 facility previously about arrangements to --

3 MR. SUN: Right.

4 THE COURT: -- increase access so that's not a new issue  
5 you're raising but really an ongoing one.

6 MR. SUN: Right. Well, I actually, not to bore the Court  
7 or belabor the point, another issue came up because of the  
8 volume of paper in the case that Mr. Subasic has, the  
9 authorities actually asked me, you know, what -- could we do  
10 something about all the papers feeling like it was, I don't  
11 know, a hazard or something, and I said, I've got a perfect  
12 solution. Let us put those on a disk and let Mr. Subasic have  
13 access to a computer, and that didn't --

14 So I did try a slightly different tact with the same result  
15 so far, but, anyway, I was aware that that had been raised. I'm  
16 going to try, you know, my best to work it out, but if I can't,  
17 it may be matter subject for the Court, but I just wanted to  
18 relay to the Court.

19 THE COURT: Okay. That's fine. Very good.

20 MR. SUN: Your Honor, what I was just speaking to Mr.  
21 Subasic about, he actually has some examples of where we found  
22 in the Government designations occasions where we think there  
23 would need to be corrections made. If your Honor would hear him  
24 speak to that, he would address that specifically, but, you  
25 know, it's numerous in volume. It's not like a word here and a

1 word there. It's frequent and at least from our perspective --  
2 you know, some of them are -- not all of them are consequential  
3 but many of them are, so that's again the --

4 MR. SUBASIC: And particularly they're bad, is not good for  
5 my defense and every word looks bad for me. If the deadlines  
6 are not extended, and I don't have time for this stuff and my  
7 lawyer does not speak Arabic or Bosnian, I will not be able to  
8 produce exculpatory evidence that shows my innocence.

9 THE COURT: I understand. Well, today is not the day to  
10 get into the substance of the objections to the transcripts. In  
11 the Court schedule, there is a time to bring those forward, and  
12 if there's a need for more time to enable, Mr. Subasic, for you  
13 and your lawyer to prepare those objections, there's a way to  
14 request that at that time.

15 So the Court's aware that that's an issue. The Court --  
16 I've told you in one of these prior conferences, Mr. Subasic, as  
17 I've said today, that the Court is acutely aware that there have  
18 been issues with respect to the quality of transcription, and  
19 I'm not prejudging any particular objection by any means, but I  
20 think all the parties in the case are aware that there have been  
21 real issues in that regard.

22 MR. SUBASIC: If I can make just one point, Judge, and I'm  
23 not going to try to take nobody's time now. My point is my  
24 previous defense have not reviewed a great majority of our  
25 material. I have reviewed SUV material plus out of 168 plus two

1 CDs for general reporting, I have reviewed only 20 percent.

2 Now, what I did, going through the transcript, the  
3 transcript I have done, I have pinpointed where I might think  
4 that speaks about me because Arabic is not translated, Bosnian  
5 barely, and I have plenty of documents shows where people speaks  
6 about me, where they call me Hibujoy (ph), that they want to kill  
7 me and do all that stuff, that's not even transcribed in the  
8 hundreds of places.

9 I cannot even recognize my name. They call me Anes or  
10 Annasol (ph), so I have to guess that. And the thing is, if I  
11 do not have allowed to listen and review all that stuff, and I  
12 don't think so. Mr. Paul, he's trying real hard to fix what the  
13 previous lawyer has damaged to listen over 1,000 hours of  
14 recording to be able to find because he cannot rely whatsoever  
15 on transcript -- transcript to find any exculpatory evidence.

16 THE COURT: I understand. I understand, Mr. Subasic. That  
17 point has been made.

18 Have you considered an MP3 player, Mr. Sun? I don't know  
19 if that would be viewed differently from my perspective.

20 MR. SUN: I actually didn't think of that, but I'll ask if  
21 that would be --

22 THE COURT: That's just an idea. I don't know if that  
23 would be perceived differently.

24 Very good. Anything further, Mr. Sun?

25 MR. SUN: Nothing further, your Honor.

1 THE COURT: I appreciate your comments, and I remand  
2 Mr. Subasic to the custody of marshals.

3 THE CLERK: Could you get Mr. Ayers?

4 THE COURT: Thank you, Madam Interpreter.

5 INTERPRETER: You're welcome.

6 MR. SUN: Thank you, your Honor.

7 THE COURT: Yes, sir. And I think we'll need Mr. Yaghi.

8 Very good. Mr. Yaghi, I alluded to this earlier, but as I  
9 know your counsel, both your lawyers at the moment have  
10 explained to you, the only reason there's a change of counsel in  
11 your case is because of Mr. McCullough's election as a judge on  
12 the State Court of Appeals. That's the only reason. There can  
13 be different reasons in a case for changing lawyers, but that's  
14 the only reason that applies in your case.

15 Mr. Ayers, I wanted to remind you, I'm going to ask you  
16 about how the transition is going generally, but I want to -- I  
17 just -- I want to remind you of the impending deadline Friday  
18 for your submission of any revised CJA budget. I know there  
19 have been indications that may be a deadline that you're going  
20 to need to have some wiggle room with, but if that's the case,  
21 please file an appropriate motion.

22 MR. AYERS: That's what I was going to ask the Court today  
23 if I needed to do that, just do it orally. I don't think I need  
24 a bunch of time. The problem is just to catalog all of this.  
25 Of course, Mr. McCullough has done quite a bit of the work and I

1 followed through with that and just so I don't have to go back.  
2 Unfortunately, when you switch representation and I think that  
3 will take a couple more weeks to do a good estimate as compared  
4 to just a high end, which I can do that tomorrow if that's what  
5 I need to do. It's not going to be as tailored as what we're  
6 trying to accomplish between now to the trial.

7 THE COURT: Well, I think the Court has an interest in  
8 having a real number as opposed to just a rifle shot.

9 MR. AYERS: That's what I was telling Mr. McCollough  
10 yesterday, that would really be an estimate, and if there's a  
11 motion that you'd like me to file.

12 THE COURT: I prefer that you do it by written motion then  
13 the record is clear. I think it's just creates a cleaner record  
14 if it's done by written motion. So let me ask: How is the  
15 transition going, Mr. McCullough?

16 MR. McCULLOUGH: If I may address this, your Honor.

17 THE COURT: Yes, sir.

18 MR. McCULLOUGH: Obviously, this particular race that I was  
19 involved in from November the 2nd just sat dormant for a long  
20 period of time. From November 29th, they started counting the  
21 ballots. It was, I think, December 3rd a newspaper article  
22 indicated that I had lost. So up until that period of time we  
23 really didn't have any reason to think that there was going to  
24 be any change of counsel. It was not until the following week  
25 that I got informal word from the Board of Elections that I was

1 actually ahead in this race and would likely win it in the  
2 director's opinion. I was so stunned that I made him repeat it  
3 a couple of times.

4 THE COURT: Well, I know you said in open court here I  
5 think at one status conference that you were 60,000 votes behind  
6 and so be it.

7 MR. McCULLOUGH: Yes, sir. And that's exactly -- and what  
8 had happened is, the news media is sometimes wrong, much to  
9 their -- they'll never admit it, but the guy that wrote that  
10 article just didn't count the votes right and that wasn't  
11 accurate. But nonetheless, it happened. It was written over  
12 the weekend. The following week we didn't know. The next day,  
13 I get a call after we had that conference, said that I was  
14 actually ahead. Upon doing that, getting that call, I  
15 immediately called Mr. McNamara of the Public Defender's Office  
16 and alerted him to the fact that there would probably need to be  
17 a change of counsel in this case and started planning even  
18 before we got the Court's order permitting the change.

19 So I brought Mr. Ayers over to the office and Mr. McNamara  
20 said that as soon as he got the Court's order, it's his  
21 intention to appoint Mr. Ayers. I brought him into the office  
22 knowing that he was enumerated (ph) which really facilitated our  
23 logistics and kind of showed him the scope of the problem and  
24 what was coming and then filed -- it was before Christmas and  
25 before the Christmas holidays that we did get the Court's order



1 permitting me to participate and up until this hearing today and  
2 for and through tomorrow, which is going to be my last day with  
3 the law firm, and start the actual logistics of getting  
4 everything to Mr. Ayers.

5 He had some time between Christmas and New Year's to do  
6 some reading. I'll let him tell you how much he's gotten done,  
7 but we got all the paper discovery in our offices in notebooks,  
8 and those -- and I showed him the charts and various guides to  
9 index that discovery as well as the CDs and the video and audio  
10 recordings.

11 We also had printed out virtually every one of the newly --  
12 the final versions of transcripts, when the transcripts would be  
13 edited and finally be posted by the public defender. We had  
14 these numbered and matched to the CD. So logistically I think  
15 we did as much as we could to prepare him.

16 He and I have met with Mr. Yaghi personally at the Harnett  
17 County Jail, was able to introduce them. We went to -- I have  
18 given him the material about the cultural expert that Mr. Boyce  
19 and I have jointly hired, and last -- I think it was last  
20 Friday, I was able to introduce him to the computer expert, and  
21 we had a session on that.

22 He's also gotten, and I gave him -- previously given him  
23 some of the work product that the computer expert had done for  
24 us, and we had a chance to review some of that. And tomorrow,  
25 the investigator that I have been using to interview witnesses

1 that are local to the Raleigh and North Carolina area has an  
2 appointment with us so that we can talk about the interviews  
3 that have been done to date and where he might see some of the  
4 others.

5 I think that we have looked at the budget for the cultural  
6 expert and the investigator and the computer person and realized  
7 that those budgets are probably going to be okay. The only ones  
8 where there may be changes would be perhaps in paralegal budget  
9 and perhaps in his budget and how much of that he's going to  
10 have to spend reviewing the prior discovery is probably the only  
11 duplication of effort that there may be in the case.

12 But I hope that by the steps that we've taken, we will have  
13 cut down on the amount of time. It won't be as chaotic as it  
14 was for us in the beginning. And it took some of these sessions  
15 and some things that the Government produced by way of  
16 documentation to help us.

17 THE COURT: Yes.

18 MR. McCULLOUGH: Collectively, you will recall, we've had  
19 that discussion of how much that helped us get through this  
20 discovery. Well, he started with that documentation in hand.

21 THE COURT: Well, that's an advantage.

22 MR. McCULLOUGH: We hope that will help him go through this  
23 material a little more. I had a motion to bring Mr. Yaghi to  
24 the courtroom today solely so that he could hear and hear this  
25 report again. It's one thing to tell your client something in

1 the confines of the jail in the interview room. It's another  
2 thing to know that we're reporting it to the Court that these  
3 steps had been taken because I want him to be comfortable,  
4 number one, that Mr. Ayers is a good attorney who is -- and is  
5 well thought of by the Court and colleagues, otherwise he  
6 wouldn't be appointed to a case of this magnitude, and that he's  
7 got the kind of experience to be able to handle a case of this  
8 magnitude competently.

9 THE COURT: Well, and you're right on both scores there.

10 MR. McCULLOUGH: And then to have me tell you of the steps  
11 we've done to make this transition as smooth and seamless as  
12 possible and get Mr. Ayers up to speed so that he knows that  
13 what we tell him is exactly what's being reported to the Court  
14 and that his competency is he is competent.

15 THE COURT: Very good. Well, thank you. I appreciate the  
16 effort you've made, Mr. McCullough. That kind of activity that  
17 you've describe is exactly what the Court had in mind that you  
18 would be doing during the transitional period.

19 MR. McCULLOUGH: We'll be meeting at 10:30 in Mr. Ayers'  
20 office, and at 1:30, I'm taking the oath of office formally --  
21 informally at my own office, and I'll be working with the other  
22 case after 1:30, but I might pack some things from my office the  
23 rest of the afternoon, but all the substantive work will be done  
24 by 1:30 and then 11:00 next Friday we'll have the ceremony.

25 THE COURT: Well, thank you. Congratulations.

1 MR. McCULLOUGH: Thank you very much, your Honor. It's a  
2 very difficult period of time from August through November it's  
3 very humbling to win a statewide election, and having done it  
4 twice, I'm quite humble and hope to do a good job in the Court  
5 of Appeals.

6 THE COURT: I'm sure you will. I understand. Mr. Ayers,  
7 did you wish to be heard?

8 MR. AYERS: Judge, briefly, we spoke to some of the  
9 logistics and deadlines that may be coming up. I don't know if  
10 I'm comfortable with those generally yet, but obviously if not,  
11 I will file appropriate motion with the Court --

12 THE COURT: Yes, please do.

13 MR. AYERS: -- to address -- the reason I wanted to address  
14 budgeting specifically is because I've seen the orders. I know  
15 the Court is aware of the size of the case --

16 THE COURT: Yes.

17 MR. AYERS: -- and budgeting is relatively new in much of  
18 this case and others, and while there have been a few of them,  
19 the same person doesn't seem to do them every time so creating  
20 that wheel of -- and how to get your vouchers approved and  
21 things of that nature also is a concern. But what I would  
22 expect is to file a motion asking for 15 to 20 days and to  
23 mainly, because I'm trying to categorize all of the discovery in  
24 this case. Mr. McCullough's office has done a good job putting  
25 it together to find it. Unfortunately, I still have to learn

1 the case from beginning to end which is a lot easier when you  
2 can find the things that you need so that step's been  
3 accomplished, but I do want to make sure I present to the Court  
4 a realistic budget as compared to one just assuming a worse case  
5 scenario to the Court with counsel and experts and things of  
6 that nature. I think we've had a good a transition as you can.  
7 Mr. Yaghi and I seem to get along well. Mr. McCullough was of  
8 assistance in meeting with the experts and the investigator  
9 tomorrow. And I then I think I've met basically everybody but  
10 potential witnesses in the case.

11 THE COURT: Good.

12 MR. AYERS: We do have the issue of the deposition  
13 overseas. I would assume that I will renote that if things  
14 don't go well with the ruling but to do that now would be  
15 premature. I think we've got some additional time.

16 THE COURT: Yes.

17 MR. AYERS: The only thing I would ask is if this Court has  
18 a preference on that motion for extension on budgeting. I don't  
19 expect it to be a very lengthy deal, just from the logistics  
20 standpoint that I would ask for more time. I don't anticipate a  
21 long dissertation but that I may need some additional time to  
22 try to get that together so I can get it out.

23 THE COURT: I wouldn't -- I think -- I think the motion  
24 would need to state the justification for the extension for good  
25 cause, but that's not particularly showing --

1 MR. AYERS: No. And I received the budgets from  
2 Mr. McCullough and some of the other counsel have been kind  
3 enough, expecially Mr. --

4 THE COURT: Good.

5 MR. AYERS: -- to fill me in on how it's kind of  
6 transpired. Mr. Sun did have a bigger window to have to  
7 present --

8 THE COURT: I know he did.

9 MR. AYERS: So I do want to make sure I address that before  
10 the Court formally, and I'm not going to ask for a lot.  
11 Reviewing the discovery in this case is going to be a chore.  
12 It's a lot.

13 THE COURT: There is a lot of material.

14 MR. AYERS: And I don't mind doing it, it's just some  
15 things I can depend on Mr. McCullough having done and some I  
16 actually have to learn myself as counsel. I do it often. It's  
17 just the problem with this case is it's much bigger than your  
18 average case as a lawyer so I may need relief for some reason,  
19 but I'll do the best I can to do it as fast as I can. I'll  
20 discuss that with Mr. Yaghi to go through all those things to  
21 make sure that I put them in the appropriate basis and  
22 perspective.

23 THE COURT: Good. Well, it sounds like you're on track.

24 MR. AYERS: I believe so as best you can be.

25 THE COURT: I understand. Very good. Well, I appreciate

1 your -- I appreciate your comments.

2 I wanted to take up an issue with just counsel separately  
3 without Mr. Yaghi being present so why don't we -- at this time,  
4 I'd like to excuse Mr. Yaghi, remand him to the custody of the  
5 marshals.

6 THE CLERK: He doesn't have to come back, right?

7 THE COURT: No.

8 Mr. Ayers, I just wanted to just touch base with you about  
9 your security clearance. My understanding from Ms. Campbell is  
10 that you'll have your briefing -- if you haven't had it yet,  
11 you'll have it tomorrow, today or tomorrow.

12 MR. AYERS: I believe this afternoon, unless something  
13 happens, we're scheduled at 2:30, and we'll get that concluded.  
14 I think the initial part is done, and I think the --

15 THE COURT: Yes.

16 MR. AYERS: -- the agent is coming by next week is what she  
17 told me yesterday so it shouldn't take them too long to look at  
18 it.

19 THE COURT: No. It worked out well. I want to -- I  
20 will -- I'll tell you, frankly, there was a little concern on my  
21 part about the delay in your submission of your application and  
22 for the security clearance. The background on the security  
23 clearance is that they -- as you may know from your experience,  
24 sometimes they're done quickly, sometimes they're not done  
25 quickly so our interest was in -- the Court's interest was in

1 getting that -- you getting your application in as quickly as  
2 possible to start the ball rolling, and it was particular  
3 concern to the Court here because Mr. McCollough had a hard  
4 deadline, but he was out of the case, and the Court didn't want  
5 to have a gap where Mr. Yaghi would be unrepresented with  
6 respect to unclassified material at any time. So that was the  
7 Court's concern.

8 But I bring that up not to scold you in any means. You did  
9 get it in and it worked out well, but just the general principle  
10 of it, a lot of the deadlines in this case, I mean, they have a  
11 history to them in the sense that a lot of thought has gone into  
12 setting them. It's a schedule that has fat built in, and the  
13 Court, obviously, entertained motions for extension, as it will  
14 with respect to the budget, but the deadlines are not real  
15 flexible in this case. I wanted to be sure that that message  
16 was made clear since you're a newcomer, Mr. Ayers.

17 MR. AYERS: I think I understand where everybody is. I  
18 don't know what happened with the application, but we got notice  
19 on the 28th on the Tuesday after and with the folks in  
20 Washington giving me information, oddly enough, about myself  
21 which I didn't know myself.

22 THE COURT: Well, I guess that's some reassurance that  
23 somebody has it.

24 MR. McCULLOUGH: And once he gets his security clearance, I  
25 can perhaps amend --



1 THE COURT: Oh, he's got it as I understand it. It's in  
2 interim.

3 MR. McCULLOUGH: Then they need to take him into the little  
4 room that we have off the side here. We have a safe in there,  
5 and we have to change the combination on the safe.

6 THE COURT: Ms. Campbell's going to get Mr. Ayers' briefing  
7 today.

8 MR. McCULLOUGH: So that'll be good.

9 THE COURT: Yes, sir. Very good. Gentlemen, that's all  
10 that I wanted to cover. Thank you for being here.

11 MR. AYERS: Is there anybody else you need?

12 THE COURT: Mr. McAfee.

13 MR. McCULLOUGH: And, your Honor, this is my final  
14 appearance in Federal court.

15 THE COURT: I'm glad we could be a part of it. Best to you  
16 on your renewed tenure on the Court of Appeals.

17 MR. McCULLOUGH: Thank you very much, sir.

18 THE COURT: I hope that's your coat, Mr. McAfee.

19 MR. McAFEE: Yes.

20 THE COURT: Very good. What computer hard drives issues  
21 are you concerned about?

22 MR. McAFEE: Judge, it's actually an expert issue.

23 THE COURT: I see.

24 MR. McAFEE: You mentioned at the beginning of the hearing  
25 the filing of MOUs. I did that Monday, and I wanted to do it

1 earlier waiting to hear back from my expert. My expert went off  
2 the radar about five months ago. He's in Wilmington and my  
3 communication was by email. That was all. I found out that  
4 Tuesday, after I filed the MOUs with my assistant, but I found  
5 out Tuesday that he had been involved in a knock down drag out  
6 domestic case in Wilmington, and he essentially sent his regrets  
7 and so he's not going to be my expert anymore.

8 THE COURT: Oh, goodness.

9 MR. McAFEE: And he did not yet -- he did not see the  
10 drive, the computer drive because what I was going to try to get  
11 him to do was meet me in Jacksonville so I could lay out what I  
12 needed to be done. So he never saw it so I didn't have to file  
13 an MOU for it and I put that in my notice for Judge Flanagan so  
14 that she would be aware of it. But I just wanted to make you  
15 aware that I'm going to -- I'm searching for a new computer  
16 expert now.

17 Because there's only really one computer out of this batch  
18 of 23 that my client had access to or used or is on video using,  
19 that's the one I'm obviously most concerned with, and it's not a  
20 massive job for forensics to get to if they have the right  
21 software. So I don't think that's going to be a problem. But  
22 essentially my other expert was approved for a certain amount  
23 already. I don't think this expert will come even close to that  
24 figure. I've got someone I'm supposed to call in Raleigh in the  
25 next day or two and see if they can take it, and if not, then we

1 knows -- know the expert that Mr. Hill and Mr. Zeszotarski are  
2 using.

3 THE COURT: I see.

4 MR. McAFEE: So I've started making calls.

5 THE COURT: Well, good. Did I understand you correctly  
6 that he's been off the radar for five months?

7 MR. McAFEE: Yeah. I mean, I've been calling, and he had  
8 sent me notice through email saying, I have a couple of personal  
9 things. I'll call you back in a little while, and then I just  
10 didn't pay any attention to it because that's really not -- in  
11 the grand scheme of things, the computer stuff against my  
12 client, in my mind, isn't going to carry as much weight as other  
13 things are, conversations, actions.

14 And so I just didn't think it was much of an issue until I  
15 got the order from the Judge and I said, you know, I never got  
16 him to sign it. And so I pushed him, you know, and I said, get  
17 back and I emailed him and then I kept hounding him, and he  
18 happens to know the reason I know him is because he's friends  
19 with an FBI agent that I know in Wilmington so I had to call the  
20 FBI agent to get my own expert to call me.

21 THE COURT: Oh, goodness.

22 MR. McAFEE: But that's regardless, nothing changes. But,  
23 anyway, I'm going to fix that --

24 THE COURT: Okay.

25 MR. McAFEE: -- and I just wanted to make you aware of

1 that. That's why you haven't seen any vouchers or anything  
2 because he hasn't done it.

3 THE COURT: Okay. Well, I assume, it sounds if it was --  
4 if it was -- if it didn't concern you that you weren't hearing  
5 from him -- well, I'm sure it concerned you at some point, that  
6 you weren't -- obviously weren't hearing from him for that  
7 extended of period of time, I'm assuming that this isn't going  
8 to disrupt your case preparation.

9 MR. McAFEE: No. I think I know -- I know what I wanted  
10 off that drive --

11 THE COURT: Okay.

12 MR. McAFEE: -- and I've actually -- as you recall, I made  
13 myself a working copy, and I've already done all --

14 THE COURT: I understand. If this had to happen, I'm glad  
15 it happened to you.

16 MR. McAFEE: I just need somebody else to tell me if I'm  
17 right or wrong. If I need, you know, to get together these  
18 full-blown multipage reports, then I'll do that.

19 THE COURT: I understand.

20 MR. McAFEE: As far as the other discovery, Judge, all  
21 paper discovery has gone through. We're nearly done with the  
22 audio. My assistant was doing that. I've spent my time doing  
23 December and January, most of December and all of January's  
24 transcripts, and I'm just trying to file through those and get  
25 the designations to go through. I have a list of some

1 objections and counter designations that I keep on these pads,  
2 and the Government's made a rather massive number of  
3 designations so there's very little of that, I think, we need to  
4 go through to designate. I don't have any trouble, but a lot of  
5 the things that the Government doesn't designate tend to be  
6 ordinary conversations or innocuous conversations, and so I  
7 don't know if there's much evidentiary value to either side, but  
8 I've got to read through them all just to see if my client  
9 stands up and says something totally contrary to what is in  
10 there, in those conversations.

11 THE COURT: I understand.

12 MR. McAFEE: But last night it was a 76 page transcript and  
13 the Government designated four pages of it, and we know they've  
14 got a number of people working on that.

15 Foreign depositions, obviously with the Islany (ph), Ismael  
16 Islany was the other co-conspirator that was separate. He was  
17 actually somebody I wanted to talk to over there. He is -- he's  
18 off the chart now, and there may be a family member still that  
19 we're trying to get ahold of, my client's mother, that I may  
20 want him deposed, but he actually works for the military base  
21 there, and he has the ability to travel, easier to come, and he  
22 may come here voluntarily so I don't know yet, and I may make a  
23 motion simply to take him if I can get some contact information  
24 in the next two weeks. And I told my client's family if I don't  
25 have anything by then, I'm not using him as a witness.

1 THE COURT: Okay. Very good.

2 MR. McAFEE: And everything else, we're moving forward.  
3 Actually, I told you about the software at this last status  
4 conference that had been offered to defense counsel CJ --

5 THE COURT: Yeah.

6 MR. McAFEE: I finally got it when I got it, but I got  
7 training on it actually yesterday, and it was about an hour-long  
8 training and it's a terrific piece of software, and for this  
9 kind of case, it's terrific because I make a list of issues  
10 which are the 13 counts of the indictment, you list the person's  
11 name in those counts, you list the dates in those counts, and  
12 the facts. You have a spreadsheet and start typing in facts. I  
13 took one hour yesterday, and after training did this, type in  
14 the facts of the indictment, and then all the players from the  
15 defense attorneys to all the witnesses, and it's by no way  
16 complete, but they all link to each other. And that's the power  
17 of this thing so I can say, show me every fact in which  
18 Irichirify (ph) is alleged to have participated in. A list of  
19 12 facts eventually -- and now those are overt acts, eventually  
20 all the notes taken can be plugged into that so I can actually  
21 pull up a report. That's what it looks like.

22 THE COURT: Yeah.

23 MR. McAFEE: And it can be exported to Power Point,  
24 exported to Word. It's a pretty nifty piece of software, and it  
25 came along just in time.

1 THE COURT: Sounds like a powerful tool.

2 MR. McAFEE: And thankfully they offered it to CJ for one  
3 third of the normal price. If I can use it in this case one  
4 more, it will pay for it.

5 THE COURT: Do you know if other counsel are using it?

6 MR. McAFEE: No. Danny Boyce's paralegal called me to ask  
7 me, and at that point I hadn't had the training. I'm just sort  
8 of playing with it right now, but they had one training in one  
9 hour. It's rather straightforward, but I don't think anybody  
10 else has purchased it.

11 THE COURT: But it's been offered to them?

12 MR. McAFEE: It was offered -- it was a window of  
13 opportunity back in October, and, in fact, they forwarded the  
14 email and his company has just been purchased by Lexus so  
15 they're trying to generate business.

16 THE COURT: Oh, I see. Interesting. It sounds like a  
17 powerful tool.

18 MR. McAFEE: It will be.

19 THE COURT: Very good. Well, it sounds like everything is  
20 on track other than getting a new computer expert.

21 MR. McAFEE: Yeah. And it shouldn't be that difficult.  
22 I've only taken a day and gotten two leads so.

23 THE COURT: Okay. Very good. Thank you, sir.

24 THE CLERK: Do you want me to call the Government now?

25 THE COURT: Yes.

1 MR. McAFEE: Good day, Judge.

2 THE COURT: You, too. Thank you.

3 This is now the closed session with counsel for the  
4 Government. Mr. Bowler, Ms. Kocher I appreciate your coming  
5 down. I don't have any specific issues to take up with  
6 Government counsel. I do appreciate the Government meeting its  
7 deadline with respect to the transcript. The transcripts,  
8 that's really an important milestone in the case. It really is.  
9 I know a lot of work went into that, and the Court appreciates  
10 the effort that was behind all that.

11 But notwithstanding the fact that I don't really have  
12 specific topics, I did want to give you an opportunity to bring  
13 to the Court's attention any concerns that you may have.

14 MR. BOWLER: We don't have anything worthy of bringing to  
15 the Court's attention, your Honor.

16 THE COURT: Okay. Very good. I guess we're at a point  
17 where we can adjourn. Thank you guys for coming in.

18 (The hearing was adjourned at 12:25 p.m.)  
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## 1 CERTIFICATE

2 THIS IS TO CERTIFY THAT THE FOREGOING TRANSCRIPT OF  
3 PROCEEDINGS TAKEN AT THE CRIMINAL SESSION OF UNITED STATES  
4 DISTRICT COURT IS A TRUE AND ACCURATE TRANSCRIPTION TO THE BEST  
5 OF MY ABILITY OF THE PROCEEDINGS TAKEN BY ME IN MACHINE  
6 SHORTHAND AND TRANSCRIBED BY COMPUTER UNDER MY SUPERVISION.

7 THIS THE 1ST DAY OF FEBRUARY, 2011.

8  
9 /S/ REBECCA L. CRUNK

10 REBECCA L. CRUNK  
11 COURT REPORTER  
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